

REMARKS

In the Office Action, claims 1-12 and 18-23 were rejected. Reconsideration of the rejection and allowance of all pending claims are respectfully requested.

Double Patenting Rejection

In the Office Action, the Examiner provisionally rejected claims 1-12 and 18-23 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent Application No. 09/682,236. In addition, the Examiner stated that:

Although the conflicting claims are not identical, they are not patentably distinct from each other because both references disclose common subject matter such as a method of enabling a user to program a common interface to communicate medical asset data from a plurality of different medical assets using a wireless communication system.

Contrary to the Examiner's assertion, whether or not the reference disclose common subject matter is not a valid justification for an obviousness-type double patenting rejection. This is especially true when both applications were filed on the same date as in this case. Therefore, neither application is prior art relative to the other.

However, although Applicant does not necessarily agree with the Examiner's rejection, Applicant will nonetheless strongly consider filing a terminal disclaimer upon indication that the pending claims are allowable. That is, Applicants respectfully request that the discussion regarding the double patenting rejection be suspended until the allowability of the claims is determined. Filing a terminal disclaimer before the claims in either application are considered allowable would be premature.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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